

THE VENICE COMMISSION

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The Venice Commission will celebrate its tenth birthday in March 2000, towards the end of Ireland's presidency of the Council of Europe. To mark the Irish presidency, the Irish Department of Foreign Affairs, in collaboration with the Office of the Attorney General, and the Venice Commission, will organise a major conference on the theme of "The protection of human rights in the 21st Century" in Dublin Castle in February 2000. The conference, which will focus on the complementarity of the protection of human rights in the legal and political spheres, will be opened by the UN Commissioner for Human Rights, Mary Robinson, and will be addressed by leading human rights lawyers from all over the world.

*and the Directorate of Human Rights
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The Venice Commission was set up by the Council of Europe shortly after the fall of the Berlin Wall, in November 1989, when communist regimes all over Eastern Europe collapsed. After the excitement of popular uprising and mass demonstrations, the slow and painstaking work of establishing democratic institutions in those countries began.

The creation of a democratic system based on respect for the rule of law is a complex process, especially in societies which have suffered many years of totalitarian rule. Ten years on this is easier to understand than it was in 1989. The historical experience of Eastern European nations varies greatly. Prior to the forty years of totalitarian communist rule before 1989 many Eastern European countries had had little or no experience of democracy. Many had experienced various shades of authoritarian, even fascist, government in the 1920s and 30s, and before that had lived under the oppressive regimes of the Ottoman and Tsarist empires. There are societies in the former communist world which before 1989 had never had experience of an independent judiciary, a prosecution service free from improper political influence, an independent legal profession available to those whose rights and freedoms are

threatened, or a free press. All these are institutions vital to the existence of a democracy based on the rule of law.

The purpose of the Venice Commission was to assist the countries of Eastern Europe seeking to establish themselves as democracies by providing them with expert advice and assistance. More properly entitled the European Commission for Democracy through Law, it is known as the Venice Commission because its regular meetings take place in Venice, somewhat incongruously, perhaps, in the faded ecclesiastical grandeur of a sixteenth century building once used by one of the great medieval confraternities of Venice, the Scuola Grande de San Giovanni Evangelista. This splendid meeting-place is made available to the Commission by the generosity of the Italian government. *Regione Veneto*

The Commission consists of experts in the field of democratic institutions, mainly senior academics in constitutional or international law, supreme or constitutional court judges, members of national parliaments, or senior public officials. They are appointed for a term of four years each by those member states of the Council of Europe who participate in the work of the Commission. They are appointed as independent experts, which is to say that, once appointed, they do not represent their governments, but bring their own individual expertise and judgement to bear on the problems the Commission is asked to help resolve.

The principal task of the Commission is to assist and advise individual countries in constitutional matters. This includes not merely advising or assisting in the drafting of constitutions but also advising in relation to such fundamental matters as legislation on constitutional courts and national minorities, electoral laws and laws establishing important national institutions. This work is often carried out at the request of the countries concerned. In other cases the request comes from the Secretary General or the Parliamentary Assembly of the Council of Europe. In some cases, a report on a country's constitution has been sought as part of the country's accession process to the Council of Europe - as happened in the case of Russia, for example.

The Commission's advice on constitutional changes is usually sought at the drafting stage rather than after adoption, when it becomes much harder to make change. Involvement at an early stage of the adoption process makes it easier for the Commission's comments to be taken into account.

The Commission has, for example, been particularly active in relation to the adoption of a new Albanian constitution, at all stages of the process from the first constitutional review in Albania in 1991 to the final approval of a constitution by referendum in November 1998. The work of the Commission has helped to ensure that Albania has a fundamental law which is fully consistent with European standards of democracy, human rights and the rule of law.

The Commission has also been very active in relation to Bosnia and Herzegovina since the Dayton peace settlement, and has assisted the international community's High Representative in relation to many difficult questions in a legal environment which, reflecting the political realities on the ground, is both highly complex and sensitive.

Albania and Bosnia are merely two examples which could be cited amongst many. The constitutional problems examined by the Commission do not always relate to the adoption or drafting of a new constitution. For example, in February this year I visited Bulgaria as part of a Commission delegation, at the request of the Bulgarian *delegation* representatives to the Council of Europe, to examine and provide a written report on a new Bulgarian law on the judiciary and the prosecution service which was alleged by the Bulgarian opposition to be an infringement of the independence of the judges and prosecutors, and which was the subject of much political controversy in Bulgaria.

As well as working on individual country problems, the Commission also undertakes more general projects. For example, the Commission produced a draft act on European citizenship as a contribution to the intergovernmental conference that led to

the Parliamentary Assembly of

the Amsterdam Treaty. In 1991 its proposals formed the basis for what subsequently became the Council of Europe Framework Convention for the Protection of National Minorities, which Ireland recently undertook to implement when it signed the Good Friday Agreement.

The Commission regularly carries out research and studies on legal topics. Subjects recently examined have included the trend towards increasing the powers of lower tiers of government in federal and regional states, the legal foundations of foreign policy, the prohibition of political parties, the financing of political parties, the participation in public life by persons belonging to minorities, and electoral law and national minorities.

The Commission regularly holds seminars which bring together leading specialists from the political, judicial and academic worlds and the Commission itself into contact with members of a specific university or constitutional court. Such exchanges help to define the rules common to democratic states in which human rights and the rule of law are respected.

The Commission publishes, through its documentation centre, a Bulletin of Constitutional Case-law, which contains summaries of the most important decisions in the area of constitutional law of over 50 countries, together with the decisions of the European Court of Human Rights in Strasbourg and the Luxembourg Court of Justice of the European Communities. This is an invaluable resource for constitutional lawyers and all those concerned with comparative constitutional law. The contents of the Bulletin are also available on the CODICES data base, available on CD-ROM and via the Internet.

What of the future for the Venice Commission, ten years on from the fall of the Berlin Wall? The Commission's main activity, constitutional assistance, is still as relevant today as then. Apart from the fact that the transition from totalitarianism to democracy has in many countries been, and continues to be, a painful and difficult process,

constitutional revisions, whether total or partial, are an inherent feature of a world subject to perpetual change. It does not seem likely that the Venice Commission will be short of work for many years to come.

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